

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
SUPPLEMENTAL
APPENDIX**

ORIGINAL

75-7190

(42177)

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

B.P./S

CLAUDE L. HUNTLEY, JR.,

Appellant,

vs.

COMMUNITY SCHOOL BOARD OF BROOKLYN, NEW
YORK DISTRICT NO. 14 and WILLIAM A. ROGERS
in his official capacity as Community Superintendent of
District No. 14,

Appellees.

APPELLEES' SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

Notice of Motion to Permit Appellees to File a Supplemental Appendix

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CLAUDE L. HUNTLEY, JR.,

Appellant,

—against—

COMMUNITY SCHOOL BOARD OF BROOKLYN,
NEW YORK DISTRICT NO. 14 and WILLIAM R.
ROGERS in his official capacity as Community Super-
intendent of District #14,

Appellees.

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of MARK D. LEFKOWITZ, sworn to on May 29, 1974, and the exhibit annexed thereto, and upon all other proceedings had herein, the undersigned will move this Court, at a session thereof to be held at the Courthouse, Foley Square, New York, New York, for an order permitting the appellees to file a supplementary appendix, and for such other and further relief as this Court may seem proper. Appellant appeals from a judgment and order of

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*Notice of Motion to Permit Appellees to File a
Supplemental Appendix*

the District Court for the Eastern District of New York
(WEINSTEIN, J.) entered on February 19, 1975.

Dated: New York, New York
May 29, 1975.

Yours, etc.

W. BERNARD RICHLAND,
Corporation Counsel,
Attorney for Appellees,
Municipal Building,
New York, N. Y. 10007

To: JAMES I. MEYERSON
NAACP

**Affidavit of Mark D. Lefkowitz in Support of Motion
to Permit Appellees to File Supplemental Appendix**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MARK D. LEFKOWITZ, being duly sworn, deposes and says:

1. I am an attorney in the Office of the Corporation Counsel of the City of New York, attorney for the appellees.

2. This affidavit is submitted in support of a motion to permit appellees to file a supplementary appendix.

3. The appeal is from a judgment and order of the District Court for the Eastern District of New York (WEINSTEIN, J.) entered on February 19, 1975. Plaintiff alleges that his termination as Acting Principal of Intermediate School 33, Brooklyn, New York, was invalid without a hearing and moreover, that his termination was racially motivated. The complaint was dismissed.

4. Having not participated at trial, and having only recently reviewed the appellant's appendix, I discovered that appellees' cross motion papers for summary judg-

*Affidavit of Mark D. Lefkowitz in Support of Motion
to Permit Appellees to File Supplemental Appendix*

ment had not been included in the appendix, while plaintiff's motion for summary judgment had.

5. These motion papers are very significant because the material contained therein was especially relied upon by the District Court in its memorandum decision. This material is highly relevant to the issues before this Court. Please see Exhibit 1 annexed hereto.

6. I have spoken with James I. Meyerson, appellant's attorney, who consents to this application.

WHEREFORE, it is respectfully requested that this Court grant the appellees' application herein.

(Sworn to by Mark D. Lefkowitz on May 29, 1975)

Order Granting Leave to File Supplemental Appendix

75—7190

D 22

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 6th day of June, one thousand nine hundred and seventy-five.

CLAUDE L. HUNTLEY, JR.,

Plaintiff-Appellant,

v.

COMMUNITY SCHOOL BOARD DISTRICT NO. 14
and WILLIAM R. ROGERS in his official capacity as
Community Superintendent of District No. 14,

Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the appellees by notice of motion dated May 29, 1975 for leave to file a supplemental appendix be and it is hereby granted.

JAMES L. OAKES
Circuit Judge

Notice of Cross-Motion for Summary Judgment

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of William A. Rogers, sworn to the 6th day of November, 1974, the joint affidavit of Brother Robert F. Lally, Joseph Bonomo, Raymond Mizgalski, Thomas Strohmenger, and Michael Laskowski, sworn to the 6th day of November, 1974, the depositions of William A. Rogers, John O'Connell, Peggy Malafronte, Charles Schonhaut, and Harold Siegel, plaintiff's answers to defendants' interrogatories and requests for admissions, the pleadings herein, and upon all the papers and proceedings had herein, the undersigned will move this Court on the 19th day of November, 1974, before the HON. JACK B. WEINSTEIN, United States District Judge, pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure, for an order granting summary judgment in defendants' favor and dismissing the complaint on the ground that there is no genuine issue as to any material fact and that the defendants are entitled to a judgment as a matter of law.

DATED: New York, New York
November 11, 1974

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Notice of Cross-Motion for Summary Judgment

Yours, etc.

ADRIAN P. BURKE

Corporation Counsel

Attorney for Defendants

By: DEBORAH ROTHMAN

Assistant Corporation Counsel

Municipal Building

New York, New York 10007

566-2186/2192

Statement Pursuant to Rule 9(g)

Pursuant to Rule 9(g) of the General Rules of this Court, defendants assert there is no genuine issue to be tried concerning the following material facts:

1. Plaintiff Claude Huntley was assigned to I.S. 33 on September 9, 1970, as Acting Principal. (See Exhibit "A" for text of "Assignment" from Board of Education).
2. Plaintiff Claude Huntley was terminated from his assignment as Acting Principal of I.S. 33 by a majority vote of the Community School Board on June 5, 1973.
3. Plaintiff Claude Huntley does not hold a New York City license for the position of Junior High School Principal or Intermediate School Principal.
4. In an action brought by the Counsel of Supervisory Assistants to contest plaintiff's appointment on the grounds that he was not a licensed principal, the Supreme Court of this State held that plaintiff's appointment was valid only because it was on an acting or temporary basis. (Exhibit "C" to affidavit of certain members of Community School Board submitted herein).
5. During plaintiff's term as Acting Principal, plaintiff himself admitted that a state of "emergency" existed at I.S. 33 as a result of many fires in various sections of the school and other disruptive forces. (Exhibit "G" to affidavit of William A. Rogers).
6. The reasons given by defendant William A. Rogers for Mr. Huntley's termination were based on valid educational criteria. (Exhibit "A" to Complaint, affidavit of William A. Rogers, and deposition of William A. Rogers).

Statement Pursuant to Rule 9(g)

7. In terminating plaintiff, defendants made no charge against him impugning either his honesty or integrity.

8. Plaintiff's termination from his assignment as Acting Principal in no way foreclosed his future employment. Plaintiff continues to be employed in the City School District of the City of New York, as a teacher at Junior High School 117 in Brooklyn.

9. On June 25, 1973, July 5, 1973, and July 13, 1973, hearings on a grievance brought by the Parents Association of I.S. 33 challenging the termination of plaintiff as Acting Principal, was held before David Stein, Esq., a hearing officer designated by the Chancellor. (Exhibit "II" to Answer).

b) Plaintiff attended all of the above hearings and testified therein.

c) The hearing officer upheld Mr. Huntley's termination, and the Chancellor of the Board of Education upheld the decision of the Hearing Officer.

10. Brother Robert F. Lally, Joseph Bonomo, Raymond Mizgalski, Thomas Strohmenger, and Michael Laskowski, were members of the Community School Board of Community School District 14, who, in 1970, voted for Mr. Huntley's assignment as Acting Principal and who, on June 5, 1973, voted to terminate Mr. Huntley's assignment.

11. The principal appointed to replace Mr. Huntley as Acting Principal of I.S. 33, Mr. Limon Pretty, is of the same race as the plaintiff.

Statement Pursuant to Rule 9(g)

12. Since 1972, thirteen persons who are members of minority groups were appointed to administrative or supervisory positions in Community School District 14.

ADRIAN P. BURKE

Corporation Counsel

Attorney for Defendants

By: DEBORAH ROTHMAN

Assistant Corporation Counsel

Municipal Building

New York, New York 10007

566-2186/2192

Affidavit of William A. Rogers

STATE OF NEW YORK, }
COUNTY OF KINGS, } ss.:

WILLIAM A. ROGERS, being duly sworn, deposes and says:

1. I am Superintendent of Community School District #14, and have served in this capacity since February of 1972.

2. In June of 1970, Claude Huntley was assigned to the position of Acting Principal of I.S. 33, which is located in Community School District No. 14, and which is under my jurisdiction.

3. The fact that Mr. Huntley's assignment was in an acting capacity only is set forth in the "Notice of Acting Assignment" annexed hereto as Exhibit "A".

4. On June 5, 1973, at a public meeting of the Community School Board, I recommended that Mr. Huntley's assignment be terminated, and on that date, the Community School Board voted to terminate the said assignment.

5. Since the reasons for my recommendation are set forth in a letter to the Community School Board dated June 1, 1973, annexed to the complaint as Exhibit "A", and in my deposition, I will only summarize some of these reasons in this affidavit.

6. In essence, as is set forth in the abovementioned letter, I requested the removal of Mr. Huntley as Acting

Affidavit of William A. Rogers

Principal because "Mr. Huntley has, over a protracted period of time, failed to demonstrate that quality of professional leadership necessary to effectively deal with the educational program at I.S. 33" and, as a consequence, the school situation at I.S. 33 deteriorated rapidly.

7. As I stated on p. 34 of my deposition, the criteria I used to rate Mr. Huntley's performance as unsatisfactory were: "My own observation, my own meetings with Mr. Huntley, the general tone of the school, reports from various people on my staff."

8. The general tone of the school at the time Mr. Huntley served as Acting Principal, can be described, in part, as follows:

A) There was a general lack of discipline in the school and the children were literally "running wild."

B) There was an abnormal number of fires and false alarms in the school. An examination of the school log, submitted herewith as Exhibit "B", reveals that on one day alone, on May 27, 1972, there were as many as ten fires. (These fires stopped completely after Mr. Huntley was terminated).

C) In addition to the fires, there was an extraordinary amount of vandalism at I.S. 33, including broken light-bulbs, marked walls and ripped bulletin boards.

D) There was an abnormal number of assaults upon teachers and other students.

E) There was general dissatisfaction among the majority of the staff members and it was questionable whether the staff and students were safe in the building.

Affidavit of William A. Rogers

9. As I stated on p. 35 of my deposition, my main interest was that "a principal must run a safe school. But generally, it is our observation that the school had fallen into a situation where the safety of the youngsters, the teachers, the paraprofessionals had reached the point of no return."

10. As is further set forth in my deposition, I based my evaluation on "observations, reports, incidents, complaints from the community, complaints from parents. It was a never ending series of reports on untoward incidents, and abnormal number of fires."

11. Mr. Huntley was invited to come before the Community School Board twice to explain what measures he was going to take to improve the situation.

12. The School Board made this request on their own based on complaints from members of the community and members of the teaching staff.

13. Community School Board members came to me and said "We are hearing reports from parents that children's lives are endangered because of the abnormal fires," and these reports were true. (p. 37 of my deposition.)

14. I also questioned Mr. Huntley's judgment. Mr. Huntley invited gang members from an organized gang within the community into I.S. 33 and I questioned his judgment in this matter. I would judge a principal by the judgment he uses in certain situations. In this particular case it was my opinion that organized gang members were not the appropriate people to lecture to children in District 14.

Affidavit of William A. Rogers

15. I met with Mr. Huntley many times during 1972 to 1973 to discuss his evaluation, and to work with him to improve the situation at I.S. 33. In fact, I met with him more than with all the other principals in District 14.

16. During one of my visits to the school, as we came out of his office I observed a group of approximately fifty to sixty children lying on the floor fighting. This incident occurred during instructional time.

17. I had a couple of meetings with Mr. Huntley and dissatisfied faculty members. The teachers charged that the school was in a state of chaos, and they felt that they were in danger and that they received no help from the administration in the school.

18. One day I received a phone call from Mr. Huntley concerning a fire in a classroom. When I entered the room where the fire had been reported to be, "I found the room burnt out, the windows out, the blackboards melted. The room was inoperable for education purposes. It was burnt out." (p. 46 of my deposition).

19. In addition to the fact that there were more security guards at I.S. 33 than at the other intermediate schools in the District, I.S. 33 was the only school in District 14 that had a New York City policeman on full-time duty.

20. As is fully set forth on p. 73 of my deposition, as each day went by "it became more impossible to run the school; more and more youngsters were out of the classrooms; there were more and more confrontations between students and teachers; there were more confrontations

Affidavit of William A. Rogers

between the principal and the teachers and it just got to the point that I paid more attention" to I.S. 33 than to all the other 26 schools in District 14 put together.

21. As further evidence of some of my attempts to help Mr. Huntley to improve the situation at I.S. 33 and of Mr. Huntley's extremely negative response to my efforts, set forth immediately below in some of my correspondence with Mr. Huntley prior to his termination.

22. On September 13, 1972, I sent Mr. Huntley a letter wherein I expressed the hope that despite the fact that there had been a series of fires and untoward incidents at I.S. 33 during the past year, I could work with Mr. Huntley to improve the situation. A copy of this letter is annexed hereto as Exhibit "C".

23. In a letter dated October 27, 1972, I informed Mr. Huntley that gangs should not be admitted to the school, and that I hoped to be able to enter into a rational dialogue with the staff of I.S. 33 on this issue. (Exhibit "D").

24. In a letter dated March 3, 1973, (Ex. 2 to my deposition), Mr. Huntley, in response to my suggestions and attempts, writes, among other things, "You having laid the gauntlet, then, I shall take it up as it is and establish my battle plans and strategy. It shall be done my way." (Exhibit "E") My written response to this letter is annexed hereto as Exhibit "F".

25. Ultimately, on March 6, 1973, Mr. Huntley, himself, addressed a letter to the parents of I.S. 33, wherein he himself admits that an emergency situation existed at

Affidavit of William A. Rogers

I.S. 33, including "too many false alarms", "too many fires", "too many children roaming the halls." (Exhibit "G").

26. At this point, I concluded that the situation at I.S. 33 was completely untenable, and that it was impossible for me to work with Mr. Huntley to improve this situation. In a letter dated May 28, 1974, (Exhibit "H"), I informed Mr. Huntley that I was referring the entire matter to the Community School Board.

27. In conclusion, I admit that Mr. Huntley's termination resulted from the fact that he was completely incapable of effectively administering I.S. 33, as is hereinabove set forth.

28. I further submit, that Mr. Huntley's allegation that he was terminated because of his refusal to abide by the "racially discriminating" policies of defendants is wholly groundless, and is negated by the evidence of Mr. Huntley's deficiencies as an administrator, as well as by the fact that since 1972, as is set forth in Exhibit "I", annexed hereto, thirteen persons who are members of minority groups were appointed to supervisory and administrative positions in District 14, including the person chosen to replace Mr. Huntley as Acting Principal.

(Sworn to by William A. Rogers on November 6, 1974)

**Exhibit A Annexed to Affidavit of William A. Rogers
—Notice of Acting Assignment to Supervisory
Position—February 25, 1971**

RCS PA 8C 153

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF PERSONNEL—BUREAU OF APPOINTMENT
65 Court Street, Brooklyn, New York 11201

NOTICE OF ACTING ASSIGNMENT TO SUPERVISORY POSITION

Date February 25, 1971

To Claude L. Huntley, Jr.

Title of Assignment Acting Principal

Social Security Number 422-36-5599

File Number 191320

Effective Date of Assignment From 9/9/70 To 8/31/71

School or Office I.S. 33

Borough Brooklyn

You are hereby assigned in the acting capacity described above, at the first-step salary of the position for the period indicated.

This assignment may terminate sooner in the event of return or appointment or transfer of a permanent incumbent to the position. Three months after effective date, the Salary Unit will issue a Salary Certificate to authorize proper payment retroactively to effective date of acting assignment, but not earlier than February 3, 1969.

*Exhibit A Annexed to Affidavit of William A. Rogers
—Notice of Acting Assignment to Supervisory
Position—February 25, 1971*

Termination for any reason before the completion of three months of continuous service in this acting assignment will result in the forfeiture of the first-step salary for any of the time served in this assignment.

BERNARD E. DONOVAN
Superintendent of Schools

cc: District Superintendent
Chairman of Local School Board
Bureau of Finance
Bureau of Teacher Records
Salary Unit

OP57 (2/69)

**Exhibit B Annexed to Affidavit of William A. Rogers
—School Log—Same as Printed in Appellants
Appendix at Pages 842-894**

**Exhibit C Annexed to Affidavit of William A Rogers
Letter from William Rogers to Claude Huntley
September 13, 1972**

BOARD OF EDUCATION
CITY OF NEW YORK
Office of School District Fourteen
310 South First Street
Brooklyn, New York 11211

WILLIAM A. ROGERS
Community Superintendent

963-4800

September 13, 1972

Mr. Claude Huntley, Principal (Acting)
I.S. 33
70 Tompkins Avenue
Brooklyn, New York 11206

Dear Claude:

As you know, the past school year witnessed a series of fires and untoward incidents at I.S. 33. It is my fervent hope that we will see this situation arrested and that the administration will give primary attention to the safety of children, teachers and para-professionals within the building.

We have entered a new era in the educational process in New York City, and as never before, the community is requesting that all school personnel must and should offer an atmosphere free of fear and confusion.

I can assure you that I will work with you hand in hand to improve the situation at I.S. 33 so that we may realize this most important aim.

Sincerely yours,

William A. Rogers
Community Superintendent

WAR:EL

**Exhibit D Annexed to Affidavit of William A. Rogers
—Letter from William Rogers to Claude Huntley
October 27, 1972**

BOARD OF EDUCATION
CITY OF NEW YORK
Office of School District Fourteen
310 South First Street
Brooklyn, New York 11211

WILLIAM A. ROGERS
Community Superintendent

963-4800

October 27, 1972

Mr. Claude Huntley, Principal
I.S. 33
70 Tompkins Avenue
Brooklyn, New York 11206

Dear Mr. Huntley:

As a result of the meetings that I have held with you, your administrators and a group of teachers, I wish to reaffirm the policy of the District. That policy is that no outside group such as gangs have reasons to be admitted to your school. I do not see any educational gain in such a situation, and I seriously question the intentions of those who instigated this experiment.

As chief administrator and principal of I.S. 33, you must bear the final responsibility for what occurs in the school and for implementing district policy which prohibits unauthorized persons from entering school buildings. In this particular matter I feel that you made a serious error in judgment and you are to consider this letter an official reprimand.

21a

Exhibit D Annexed to Affidavit of William A. Rogers
—Letter from William Rogers to Claude Huntley
October 27, 1972

It is my hope that when the smoke clears from the situation, I and the entire staff of I.S. 33 can meet and discuss the ramifications of this incident and have a rational dialogue on some of the implications that were raised in the meetings of last week.

Yours truly,

WILLIAM A. ROGERS
William A. Rogers
Community Superintendent
District 14

WAR:EL

**Exhibit E Annexed to Affidavit of William A. Rogers
—Letter from Claude Huntley to William Rogers
March 3, 1973**

BOARD OF EDUCATION OF THE CITY OF NEW YORK
MARK HOPKINS INTERMEDIATE SCHOOL
(I. S. 33)
70 Tompkins Avenue Brooklyn, N. Y. 11206

Principal
Claude L. Huntley, Jr.

Assistant Principals
David Feldmesser
Buenaventura Gibbs
James Miller
Edna D. Oling
Melvin Rudoltz
Dorothy Straker

Chairmen
Marvin Polonsky
Margaret Bogart

March 3, 1973

Mr. William Rogers
Community Superintendent
District # 14
310 South 1st Street
Brooklyn, N. Y. 11211

Dear Mr. Rogers:

This is a letter pertaining to our conference on Friday, March 2, 1973. I came to your office to seek advice, suggestions, or recommendations pertaining to upgrading

Exhibit E Annexed to Affidavit of William A. Rogers
—Letter from Claude Huntley to William Rogers
March 3, 1973

and improving my school. I also informed you about the two incidents of fires on Tuesday, February 27th, 1973 and the false alarms of February 28th and March 1st, 1973. I cited the coincidence of calls about cited fires from Mr. Max Shapiro, Central Board of Education Public Relations; calls to your office from someone in my school; calls to the N. Y. Post and the NEW YORK DAILY NEWS about cited fires, all in the space of 15 minutes after the fires. I also apprised you of a call from the Chancellor's office on Friday, March 2nd, 1973 pertaining to an individual, who stated that he was a teacher at my school, informing cited office about the fires and the false alarms. I informed you that all these calls seemed to establish a pattern of an attempt by certain uncooperative U. F. T. teachers, on my staff to discredit my school and to give it a bad name.

I further stated to you that I would welcome any suggestions from you to help alleviate the specific problems. You offered *none* whatsoever. Instead, your central theme was that conditions at I. S. # 33 were *chaotic* and *out of control*. You also inferred that I had lost control of the school. This, I disagreed wholeheartedly with you and stated vehemently that this was not so. I informed you that the certain percentage of uncooperative U. F. T. members have formed a "cabal" whose sole objective is to "GET HUNTLEY AT ALL COSTS". This group, whom I shall refer to as the DELEGATION has and still is doing its utmost best to erode my powers as principal of I. S. # 33. The inordinate number of grievances documents this fact. To emphasize this aspect of cited "cabal," all grievance decisions have been against me. The law of average states that "an individual cannot be wrong

Exhibit E Annexed to Affidavit of William A. Rogers
—Letter from Claude Huntley to William Rogers
March 3, 1973

in every case." In fact, they have had only three (3) legitimate cases, e.g. class size, lateness of giving ratings, and additional comment on the rating sheet. The rest have been merely "knit picking" and a concerted "racist plot" to "GET AT HUNTLEY". I must also state that you have aided and abetted this drive by your favorable decisions in all of these grievance cases. Cited decisions, from your office have denigrated my powers as chief administrative officer of I. S. # 33.

During our entire conference, you offered no recommendations or encouragement to improve the climate of my school. However, you chose to make implied threats to my career in regards to the recommendations you plan to make to the Community Local School Board of District # 14. When such threats are made, you can rest assured that you will be involved in and incessant struggle to be remembered in our district. No one threatens my career and my livelihood *without a fight*. I have been fighting continuously since I've been the PRINCIPAL of I. S. # 33; trying to elevate the school; trying to make it a viable community institution; fighting against the odds every step of the way; demanding that I. S. # 33 get its share of the "pie" from your headquarters; and helping to instill in our children that "they are somebody".

You further stated and I quote: "you are in water above your head". Let me inform you that I was nearly submerged in the beginning until I learned of the unfairness of community affairs as exhibited by your conduct of the office of the Superintendent. As you make your recommendations to the Community Local School Board,

Exhibit E Annexed to Affidavit of William A. Rogers
—Letter from Claude Huntley to William Rogers
March 3, 1973

please remember that "people who live in glass houses cannot afford to throw stones", especially those not fully qualified for their position.

Since you offered no recommendations, I then must act on my own to ward off the uncooperative U. F. T. teachers in my school and against your non-compromising decisions, drastic perhaps, that I must make. There must be some drastic ones that I must make to help improve the school. You can rest assured that I shall devise methods to deal with school's problems. I and my loyal supervisors and teachers will defend the school against the "deadwood" on my staff. If they are not performing accordingly, they will be eliminated from the school. I will not stand idly by while BLACK, HISPANIC, and OTHER children are being educationally mutilated and deprived of education. I will not make them the sacrificial lambs on the altar of *racism*. I will not equivocate; they will get "quality education" even if I have to "sweep the slate clean" and get a new staff dedicated to the proposition that all of our children receive their full measure of devotion to the learning process.

I. S. # 33, always considered the "sick school of the district" has suffered too long from inattention and neglect. It is the school that you stated "parents are transferring their children from and making it acquiesce as to whether they want their children to go to it after leaving the 5th and 6th grades; complaints about cited school surpassing all others in the district in regards to problems; receipts of messages as you claim, from my school pertaining to the unfavorable conditions in the school; and constantly referring to the chaos there. How is it

Exhibit E Annexed to Affidavit of William A. Rogers
—Letter from Claude Huntley to William Rogers
March 3, 1973

then can you refuse to come to our aid—flatly refusing to make suggestions for improvement? My school is not the only Intermediate or Junior High School, in our district, having problems. Whatever occurs at I. S. # 33 is always mushroomed into catastrophic proportions. Why? My answer is that it is “racially inspired” Are you recoiling at the thought of a qualified BLACK MAN challenging the establishment and its educational political implications? Do you regard this as being rebellious and detrimental to the status quo?

If you have educational political debts to pay, please do not repay them at my expense. I will not stand idly by “twittling my thumbs” and see my career threatened or emasculated by mediocrity. I want you to be further advised that I am fully qualified and certified by The New York State Education Department to the RANK of DISTRICT SUPERINTENDENT. Also, as to pedagogy, administration, supervision, and teaching I bar no man nor woman in our district. I’ve been in this business too long to have anyone, including you, to threaten my continuance in this area of specialization. I must remind you that I’ll wade in my own blood if necessary, to defend my position at I. S. # 33. I can freely say that I have done a commendable job during my three (3) years at my school—against all the odds, especially against a certain percentage of uncooperative U. F. T. teachers.

You having laid the gauntlet, then, I shall take it up as it is and establish my battle plans and strategy. It will be done my way, especially, since you offered no suggestions, recommendations, or cooperative plans to help

Exhibit E Annexed to Affidavit of William A. Rogers
—Letter from Claude Huntley to William Rogers
March 3, 1973

improve the climate of my school. I SHALL DO IT "the chips fall where they may".

I hope that I have made my position clear about this matter in no unmistakable terms.

Yours truly,

CLAUDE L. HUNTLEY, JR.
Claude L. Huntley, Jr.
Principal

C.C.: N.Y.C. Central Board of Education Members
District # 14 CLSB Members
Mrs. Ada Pratt, P.T.A. President
Mr. Ponce Hatch, P.T.A. Bus. Mgr.
Mrs. Mae Miller, Tompkins Ave. Tenants Council
Mr. Howard Walker, Marey Ave. Tenants Council
Mrs. Mildred Tudy, Crispus Attucks C. E. C.
Mr. Martha Bailey, Community Worker,
Boys High School

**Exhibit F Annexed to Affidavit of William A. Rogers
—Letter from William A. Rogers to Claude Huntley
March 20, 1973**

BOARD OF EDUCATION
CITY OF NEW YORK
Office of School District Fourteen
310 South First Street
Brooklyn, New York 11211

WILLIAM A. ROGERS
Community Superintendent

963-4800

March 20, 1973

Mr. Claude Huntley, Principal
I.S. 33
70 Tompkins Avenue
Brooklyn, New York 11206

Dear Mr. Huntley:

On Friday, March 2nd, you and I had a conference at my office to discuss the situation at I.S. 33. That situation being that a general level of disorder existed at the school and the fact that two fires had been set in the building earlier in the week.

During the course of our conversation, you returned continually to a theme that you have stated many times previously; that is, that there exists a conspiracy on the part of a group of teachers to discredit you and to "get Huntley".

You asserted that you felt that you had been doing a good job and that no blame for the situation could be attributed to your leadership. You then asked me for suggestions as to how to correct the situation. I pointed out to you

Exhibit F Annexed to Affidavit of William A. Rogers
—Letter from William A. Rogers to Claude Huntley
March 20, 1973

that your attitude left me little room to offer alternatives to the current situation and that you should rethink your position and that a spirit of trust and cooperation were needed to overcome the serious split between you and the members of your staff.

I indicated to you that I had already made provisions in the assignment of additional personnel and that there seemed to be little or no improvement in the general tenor of the school. I did indicate to you that I would be willing to meet with you after the weekend, and I was hopeful that you would be willing to relax your inflexible attitude on this entire matter before the situation became completely out of hand.

Your response to this meeting was to write a letter dated March 3rd, mailed March 7th and received in my office March 9th. In this letter you chose to attack me and you asserted that I was part of a racist plot to destroy your career. In this letter, you continue to maintain that you are entirely blameless for the situation that exists at your school. I would like to make it very clear that in both instances, nothing could be further from the truth, and it is my opinion that your letter is an unprofessional attempt to shift the blame for the situation at your school from your shoulders to mine.

I am now taking the opportunity to set the record straight, and to clarify misstatements of facts that appear in your diatribe. As you very well know, the situation at I.S. 33 has been in a state of deterioration long before I assumed the role of Community Superintendent. Your school has been beset by a general state of chaos and the

Exhibit 1 Annexed to Affidavit of William A. Rogers
—Letter from William A. Rogers to Claude Huntley
March 20, 1973

latest incidents of fires are only a sad addendum to a sorry state of affairs. You and I both know, better than anyone else, that I have met with you on numerous occasions where I have offered my assistance and advice but where you have always resorted to the same charges of conspiracy and racism and have refused to shoulder the responsibility for the conditions that prevail at your school.

In your letter you complained that I have denigrated your position and have refused to back you in grievance proceedings brought to my attention. I would like to remind you that I have stated to you time and time again that you must be able to document your position and that I can not rule in your favor in violation of contractual agreements.

I would also like to bring to your attention your letter to the parents of March 6, 1973 where you state that an emergency situation is a fact at our school. In this letter, you cite many of the same points that I have raised to you repeatedly. I think the evidence is incontrovertible that your school has reached a point where the safety of the children, teachers and other personnel is open to question. I think by your own hand you have refuted your assertion that you have done a good job for the past three years.

In closing, I would like to remind you that there is no need for you to engage in the type of unprofessional charges and remarks that appear in this letter. Mr. Huntley, the entire tone of your letter is strident and hysterical. You have chosen to raise the banner of racism

Exhibit F Annexed to Affidavit of William A. Rogers
—Letter from William A. Rogers to Claude Huntley
March 20, 1973

against me and charge that I am harrassing you and threatening your career because of the color of your skin. This is nothing but rhetoric of the worst sort and an insult to the intelligence of all people concerned. I, as the Superintendent of this district request that you once again reconsider your position and tone and make the effort that is needed to achieve quality education for the children of I.S. 33.

Very truly yours,

WILLIAM A. ROGERS
William A. Rogers
Community Superintendent
DISTRICT 14

cc: Dr. Seymour Lackman, Central Board of Ed.
District 14 LCSB Members
Mrs. Ada Pratt, P.S.A. President
Mr. Ponce Hatch, P.T.A., Bus. Mgr.
Mrs. Mae Miller, Tompkins Ave. Tenants Council
Mr. Howard Walker, March Ave. Tenants Council
Mrs. Mildren Tudy, Crispus Attucks C.E.C.
Mrs. Martha Bailey, Community Worker, Boys High
School

**Exhibit G Annexed to Affidavit of William A. Rogers
—Letter to Parents from Claude Huntley
March 6, 1973**

MARK HOPKINS INTERMEDIATE SCHOOL #33
70 Tompkins Avenue, Brooklyn, N.Y. 11206
Claude L. Huntley, Principal

March 6, 1973

Dear Parents:

This is a letter informing you of the EMERGENCY SITUATION occurring in our school. We have had the following incidents:

1. Too many false fire alarms.
2. Too many fires in various sections of our school.
3. Too many children roaming the halls.
4. Too many fights in school and after school, especially among girls.
5. Some teachers failing to do their jobs in the classrooms.
6. Too much disrespect for authority by the students.
7. Constant use of vile, obscene and profane language by the students.

With the above in mind, I am asking for your help in improving these conditions. *I need Parent Volunteers in the school immediately.* You are needed to help insure the security and safety of the students (your children). You are also needed to help patrol the corridors on all floors, visit classes to observe the teachers performing in the classroom, door patrol, and basement duty.

Exhibit G Annexed to Affidavit of William A. Rogers
—Letter to Parents from Claude Huntley
March 6, 1973

Your assistance and cooperation is in demand now. I urge you to come in and help to make sure that your children will get "quality education." You can no longer depend on the old axiom "let George do it." *You must act now because tomorrow may be too late.* There may not be a tomorrow for them. Their tomorrow is today. If they don't get an education now, they will be lost for the future.

AGAIN I URGE YOU TO COME INTO THE SCHOOL AND HELP.

Very truly yours,

CLAUDE L. HUNTLEY, JR.
Claude L. Huntley, Jr.
Principal

CLH:lm

**Exhibit H Annexed to Affidavit of William A. Rogers
—List of Persons who are Members of Minority
Groups and who were Appointed to Supervisory and
Administrative Positions in District 14 Since
February, 1972**

BOARD OF EDUCATION
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WILLIAM A. ROGERS
Community Superintendent

963-4800

The following persons who are members of minority groups were appointed to supervisory and administrative positions in District 14 since February, 1972:

District Office	Jose Garcia—Health Ed. Supervisor
	Mario LeMagne—Director Title III Program
	Maria Ramos—Bilingual Supervisor in School & Community Relations
PS 16	Aurea Molina, Acting A/P
PS 19	Carlos Ledee, Acting A/P
PS 23	Donald Ashman, Principal (Acting)
PS 120	Maria Cistero, Principal (Acting)
PS 157	Brunhilde Hernandez, Acting Principal
PS 257	Emerald Segure, Acting A/P
IS 33	Linon Pretty, Principal (Acting)
	Henry Whitney, Acting A/P
JHS 126	Frances Horne, Acting A/P
	Buenaventura Gibbs, Acting A/P

**Exhibit I Annexed to Affidavit of William A. Rogers
Letter from William Rogers to Claude Huntley
May 8, 1973**

BOARD OF EDUCATION
CITY OF NEW YORK
Office of School District Fourteen
310 South First Street
Brooklyn, New York 11211

WILLIAM A. ROGERS
Community Superintendent

963-4800

May 8, 1973

Mr. Claude Huntley, Principal
I.S. 33
70 Tompkins Avenue
Brooklyn, New York 11206

Dear Mr. Huntley:

On Sunday, April 30th, I met with the executive board of the Parents Association of I.S. 33. During that meeting, the parents and I discussed the unstable situation that exists at I.S. 33. The parents indicated that they wish to have certain requests implemented and that they were demanding that the school be made safe, and that quality education be the aim of the professional staff.

They also requested such things as improved lighting, proper medical services, greater supervision and a bilingual class and teacher which I found to be more than reasonable and in the best interests of the children. I also indicated to them that I would meet with the staff and you in order to assist in bringing about a greater understanding and respect between administration and

Exhibit I Annexed to Affidavit of William A. Rogers
Letter from William Rogers to Claude Huntley
May 8, 1973

staff. I made it very clear to them that the constant squabbling and frequent recriminations were leaving the school in an untenable position, and that all sides had to make the effort to work together.

Since that meeting, I have met with you and the teachers and discussed many of the points raised by the parents. I have attempted to implement their requests as far as I am able to at this time, and to respect all points of view. I honestly felt that I had made progress and that a small step had been taken to achieve a level of understanding within the school.

You, in turn, have chosen to look upon this situation as a vindication of your performance and you refuse to recognise the rights and the concerns of parties to the original dispute. Specifically, I am referring to your refusal to permit teachers and parents of all persuasions to meet at the school last Thursday night. I feel that this would have been a positive step in creating an atmosphere of understanding.

You have also taken my statements to you out of context and have indicated that I have given you carte blanche in your dealings with the professional staff. During my conversation with you we spoke of mutual cooperation between staff and administration, but you have chosen to twist my words so that the implication is any teacher who does not agree with you is subject to the wrath of the superintendent.

Up to this time, you have yet to engage in any meaningful discussion with the teachers at I.S. 33, and you have left the door open to continued mistrust and disagree-

37a

Exhibit I Annexed to Affidavit of William A. Rogers
Letter from William Rogers to Claude Huntley
May 8, 1973

ment. The word "teamwork" is easily definable but in your case, reluctantly implemented.

I wish to inform you that I will live up to the provisions of the agreement that deal with the specific improvements that directly effect the children, but I wish to make it crystal clear that until you implement the spirit of the agreement, I consider those provisions dealing with you directly null and void. I have referred this entire matter to the Community School Board and have asked them for their guidance and assistance in this situation.

Very truly yours,

WILLIAM A. ROGERS
William A. Rogers
Community Superintendent

WAR:EM

cc: Mrs. Pratt, Parents, Association, I.S. 33
Mr. Brodsky, UFT, I. S. 33
Members of the Community School Board

**Affidavit of Brother Robert F. Lally, Joseph Bonomo,
Raymond Mizgalski, Thomas Strohmenger and
Michael Laskowski**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

BROTHER ROBERT F. LALLY, JOSEPH BONOMO, RAYMOND MIZGALSKI, THOMAS STROHMENGER, and MICHAEL LASKOWSKI, being duly sworn, depose and say:

1. We were members of the Community School Board of Community School District 14, who, in 1970, voted to assign Mr. Claude Huntley to the position of Acting Principal of I.S. 33.
2. We also voted on June 5, 1973, to terminate Mr. Huntley's assignment as Acting Principal.
3. In 1970, our initial attempts to assign Mr. Huntley to the position of Acting Principal of I.S. 33 were vigorously opposed by the Counsel of Supervisory Associations.
4. By order to show cause dated August 20, 1970, the Counsel of Supervisory Associations commenced a judicial proceeding against the Community School Board of Com-

*Affidavit of Brother Robert F. Lally, Joseph Bonomo,
Raymond Mizgalski, Thomas Strohenger and
Michael Laskowski*

munity School District 14, seeking an order preventing said Board from assigning Mr. Huntley to the position of Acting Principal of I.S. 33. In this Order to Show Cause, a copy of which is annexed hereto as Exhibit "A," the Counsel of Supervisory Associations obtained a restraining order prohibiting said assignment pending a hearing on their underlying application.

5. Subsequently, by Order to Show Cause dated October 26, 1970, a copy of which is annexed hereto as Exhibit "B," the Counsel of Supervisory Associations instituted a criminal contempt proceeding against the Community School Board for allegedly violating the aforementioned restraining order.

6. Despite this vigorous opposition, we continued to fight for Mr. Huntley's assignment, and in a decision dated January 26, 1971, a copy of which is annexed hereto as Exhibit "C," the Supreme Court the State of New York, (County of Kings), upheld the legality of his acting assignment.

7. Much to our regret, however, in the 1972-1973 school year, it became clear to us that Mr. Huntley was not, in fact, capable of implementing an effective educational program at I.S. 33.

8. Accordingly, on June 5, 1973, upon the recommendation of Mr. Rogers, Community Superintendent, we voted to terminate Mr. Huntley's assignment.

9. In the light of our determined efforts to assign Mr. Huntley to the position of Acting Principal despite vigor-

*Affidavit of Brother Robert F. Lally, Joseph Bonomo,
Raymond Mizgalski, Thomas Strohmenger and
Michael Laskowski*

ous opposition and extensive Court proceedings, we submit that the allegations of racial bias levelled against the Community School Board are wholly unwarranted and grossly unfair.

6th day of Nov., 1974
County of Kings

MARTIN N. ADLER
Notary Public, State of New York
No. (ILLEGIBLE)
Qualified in Nassau County
Commission Expires March 30, 1975

Brother Robert F. Lally
BROTHER ROBERT F. LALLY

Joseph Bonomo
JOSEPH BONOMO

Raymond Mizgalski
RAYMOND MIZGALSKI

Michael Laskowski
MICHAEL LASKOWSKI

Thomas Strohmenger
THOMAS STROHMENGER

**Exhibit A Annexed to Affidavit of Brother Robert
F. Lally—Order to Show Cause**

At a Special Term, Part II, of the
Supreme Court of the State of
New York, County of Kings, Civic
Center, Brooklyn, New York, on
the 20th day of August, 1970.

Present:

HON. WILLIAM COWIN

Justice

IN THE MATTER OF THE APPLICATION OF
COUNCIL OF SUPERVISORY ASSOCIATIONS OF
THE PUBLIC SCHOOLS OF NEW YORK CITY,
on behalf of all Supervisors, Licensed by the Board of
Education of the City of New York Whose Rights, Duties
and Obligations are Directly Affected; ANNA O. ZILL,
individually and on behalf of all Licensed Personnel
Eligible for Appointment as Principals to Junior High
and Intermediate Schools,

Petitioners,

—against—

BOARD OF EDUCATION OF THE CITY OF NEW
YORK, by MURRY BERGTRAUM, its President, IRV-
ING ANKER, Superintendent of Schools, (Acting),
and COMMUNITY BOARD NO. 14 by ROBERT F.
LALLY, its Chairman,

Respondents.

Index No. 13970/70

*Exhibit A Annexed to Affidavit of Brother Robert
F. Lally—Order to Show Cause*

Upon the annexed petition verified the 19th day of August, 1970, the affidavit of Walter J. Degnan, sworn to the 19th day of August, 1970, together with the exhibits attached thereto: Hearing held and Respondents, appearing in opposition to this motion by J. Lee Rankin, Esq. by Miss Paula Omansky.

LET the Respondents show cause at a Special Term, Part I, of this Court to be held at the Courthouse, Civil Center, Brooklyn, on the 27th day of August, 1970, at 9:30 o'clock in the forenoon of that day or as soon thereafter as Counsel can be heard, why an order and judgment should not be issued pursuant to Article 78 of the CPLR enjoining the Respondents herein from:

- (a) Making any appointment or designation as Principals of Public Junior High School or Intermediate Schools No. 33 in the Borough of Brooklyn, or in any Junior High School or Intermediate School in the City School District of the City of New York similarly situated;
- (b) filling or designating the appointment to any vacancies in Junior High School or Intermediate School 33 where such act, appointment or designation, is in violation of Section 2573(2), or Section 2569, or Sections 2590(c), (j) or Section 3573(10) of the New York State Education Law or of Article V, Section 6, of the New York State Constitution or of Article VIII or other relevant provisions of the Collective Agreement, dated October 1, 1969 between Petitioners and Respondents;
- (c) from refusing to promptly process and fill all vacant positions of Principals of Junior High School or

*Exhibit A Annexed to Affidavit of Brother Robert
F. Lally—Order to Show Cause*

Intermediate School 33 by designating appointment thereto from Civil Service lists of eligible persons, as required, which persons are licensed in accordance with law or from relevant transfer provisions of the Collective Agreement between Petitioners and Respondents, dated October 1, 1970;

- (d) implementing the appointment, directly or indirectly, by Respondents, of Junior High School or Intermediate School Principals appointed and/or designated by methods other than from lawful lists of persons eligible for appointment or by transfer pursuant to Collective Agreement dated October 1, 1969;
- (e) and why the Petitioners should not have such other and further relief as to this Court may seem just and proper.

SUFFICIENT CAUSE having been shown, Respondent Community Board No. 14, their agents, representatives and employees herein are enjoined, pending the hearing and determination of this application:

1. From appointing, assigning, designating, making or implementing the designation or appointment of a Junior High School or Intermediate School Principal to Intermediate School No. 33 or any similarly situated or utilized school, unless such appointment, designation or assignment is made in accordance with the eligibility list for Junior High School and/or Intermediate School as promulgated by the Board of Examiners and/or the transfer provisions of the Collective Agreement, between the Petitioners and the Respondents, dated October 1, 1970;

*Exhibit A Annexed to Affidavit of Brother Robert
F. Lally—Order to Show Cause*

2. From directing or assigning any individual to the day-to-day operations, supervision and/or administration of Intermediate School No. 33 unless such individual is a licensed and appointed Junior High School or Intermediate School Principal;

3. From making any payment of moneys, whatever the source, to any person designated or appointed as Principal or Acting Principal or any person possessing or exercising similar responsibilities, for Intermediate School No. 33 unless such appointment or designation has been made in accordance with the eligibility list as promulgated by the Board of Examiners or the relevant provisions of the Collective Agreement between the petitioners and the respondents, dated October 1, 1969.

Let personal service of a copy of this Order and the papers upon which it is based, upon the respondents on or before 12 o'clock in the afternoon of the 24th day of August, 1970, be deemed good, and sufficient service.

ENTER:

WILLIAM T. COWIN
Justice of the Supreme Court

Granted
Aug. 20, 1970

ANTHONY N. DURSO

**Exhibit B Annexed to Affidavit of Brother Robert
F. Lally—Order to Show Cause to Punish for
Criminal Contempt**

At a Special Term, Part II, of the
Supreme Court of the State of
New York, County of Kings, Civic
Center, Brooklyn, New York, on
the 26th day of October 1970.

Present:

HON. MILTON MOLLEN

Justice

INDEX No. 13970/70

In the Matter of the Application of
COUNCIL OF SUPERVISORY ASSOCIATIONS OF
THE PUBLIC SCHOOLS OF NEW YORK CITY,
on behalf of all Supervisors Licensed by the Board of
Education of the City of New York whose Rights,
Duties, and Obligations are Directly Affected; ANNE
O. ZILL, individually and on behalf of all Licensed
Personnel Eligible for Appointment as Principals to
Junior High and Intermediate Schools,

Petitioners,

—against—

BOARD OF EDUCATION OF THE CITY OF NEW
YORK, by MURRY BERGTRAUM, its President,
IRVING ANKER, Superintendent of Schools (Acting),
and COMMUNITY BOARD NO. 14, by ROBERT F.
LALLY, its Chairman,

Respondents.

*Exhibit B Annexed to Affidavit of Brother Robert
F. Lally—Order to Show Cause to Punish for
Criminal Contempt*

UPON the annexed affidavit of Walter J. Degnan, sworn to the 23rd day of October 1970, and upon the order of this Court granting Petitioner a temporary restraining order, duly made by Mr. Justice William T. Cowin on August 20, 1970, a true copy of which is annexed hereto, and upon all the proceedings heretofore had herein,

LET the Respondent Community Board No. 14 (hereinafter Respondent "Community Board"), Respondent Robert F. Lally, individually and as Chairman of Community Board, and Respondents Joseph M. Bonomo, LeRoy O. Fredericks, Michael Laskowski, Juan R. Martinez, Roman A. Mizgalski, Chaim A. Pincus, Angel L. Reyes, and Thomas Strohmenger, individually and as officers of the Respondent Community Board, and Claude Huntley, individually and as an employee of Respondent Community Board, show cause at a Special Term, Part I, of this Court, to be held in and for the County of Kings at the Courthouse thereof, Civic Center, in the Borough of Brooklyn, City of New York, on the 30th day of October 1970, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made and entered herein adjudging each of them guilty of, and punishing them for criminal contempt of this Court, for willful disobedience of a lawful mandate of this Court, to wit, said order of Mr. Justice Cowin, as follows:

"SUFFICIENT CAUSE having been shown, Respondent Community Board No. 14, their agents, representatives and employees herein are enjoined, pending the hearing and determination of this application:

*Exhibit B Annexed to Affidavit of Brother Robert
F. Lally—Order to Show Cause to Punish for
Criminal Contempt*

1. From appointing, assigning, designating, making, or implementing the designation or appointment of a Junior High School or Intermediate School Principal to Intermediate School No. 33 or any similarly situated or utilized school, unless such appointment, designation or assignment is made in accordance with the eligibility list for Junior High School and/or Intermediate School as promulgated by the Board of Examiners and/or the transfer provisions of the Collective Agreement, between the Petitioners and the Respondents, dated October 1, 1970;

2. From directing or assigning any individual to the day-to-day operations, supervision and/or administration of Intermediate School No. 33 unless such individual is a licensed and appointed Junior High School or Intermediate School Principal;

3. From making any payment of moneys, whatever the source, to any person designated or appointed as Principal or Acting Principal or any person possessing or exercising similar responsibilities, for Intermediate School No. 33 unless such appointment or designation has been made in accordance with the eligibility list as promulgated by the Board of Examiners or the relevant provisions of the Collective Agreement between the Petitioners and the Respondents, dated October 1, 1969."

And why Respondents should not be so punished for each day that such contempt persists commencing on or

*Exhibit B Annexed to Affidavit of Brother Robert
F. Lally—Order to Show Cause to Punish for
Criminal Contempt*

about August 20, 1970, and continuing up to and including the last day of the hearing of this motion as to said defendants, respectively;

And why such other, further, and different relief should not be granted as to this Court may seem just and proper in the premises;

SUFFICIENT CAUSE appearing therefor, let service of a copy of this order and the papers on which it is based upon each of Respondents above named on or before

M. on the 28th day of October 1970 be deemed good and sufficient service.

ENTER

MM

Justice of the Supreme Court

**Exhibit C Annexed to Affidavit of Brother Robert
F. Lally—Memorandum Decision of Pino, J.
January 26, 1971**

MEMORANDUM

SUPREME COURT
KINGS COUNTY

(SPECIAL TERM PART I)

By PINO, J.

In the Matter of the Application of COUNCIL OF
SUPERVISORY ASSOCIATIONS OF THE PUBLIC
SCHOOLS OF NEW YORK CITY, etc., et ano.,

Petitioners,

v.

BOARD OF EDUCATION OF THE CITY OF NEW
YORK, etc., et ano.,

Respondents.

Dated January 26, 1971

In this Article 78 proceeding the paramount issue is whether respondents may appoint principals of intermediate schools without regard to an existing Civil Service list initially promulgated as a junior high school principals list, from which eligibles have been drawn to fill such intermediate school positions.

*Exhibit C Annexed to Affidavit of Brother Robert
F. Lally—Memorandum Decision of Pino, J.*

January 26, 1971

The concept of the intermediate school presents an entirely new philosophy in pre-high school education. Inspired by the report of the State Education Commissioner's Advisory Committee on Human Relations and Community Tensions ("Allen Report") and proposals of civic and parents groups, the then Acting Superintendent of Schools, Bernard E. Donovan, developed a "Statement of Policy—Excellence for the Schools of New York City," which was approved, by resolution, on April 28, 1965 by the Board of Education of the City of New York. The statement proposed three schools—elementary, intermediate and high school—divided initially on a 5, 3, 4 year basis. Elementary school would cover kindergarten through 5th grade (K-5); intermediate school would cover 6th through 8th grade (6-8); and high school would cover 9th through 12th grade (9-12). Ultimately the plan was to provide for a 4-4-4 year system. The existing organization provided for an elementary school (K-6), a junior high school (7-9), and a high school (10-12), or an elementary school (K-8) and a high school (9-12).

The "Statement of Policy" reads in part as follows:

"There needs to be developed a new program of education in this city for the intermediate years of schooling. The exact grades of this new program are not so important as are its nature and content. This period of education must take the child from his elementary concentration on basic skills to the use of those skills in the acquisition of knowledge and the development of human and social relationships. In these intermediate years the child will begin to explore organize knowledge in

*Exhibit C Annexed to Affidavit of Brother Robert
F. Lally—Memorandum Decision of Pino, J.
January 26, 1971*

the major subject areas. He will also use his basic skills in learning to adjust to new group activities and to somewhat more formal educational organization. One of the most important phases of his education in this period will be his introduction to other children who are different from those with whom he associated with in his elementary school. It is obvious that many elementary schools in this city are going to be ethnically unbalanced by their location in the area they serve. For the very early years of basic education, this disadvantage seems to be outweighed by the benefits of a quality education program geared to basic skills, training, parental involvement and community concern. But at or about the 5th grade there must be added to this program an extra ingredient of excellence—the sharing of learning experiences and life values with other children of different races, nationalities and economic status.

This means that the program for the intermediate years must contain a new organization of learning which will introduce children to these sensitive relationships. It cannot be done simply by re-shuffling the present subject matter of these years. It requires a whole new approach to the learning process. Experiences and techniques must be devised to bring children together effectively in this new school grouping. Special interests must be identified and fostered and attention must be given to the continued facility in the use of the basic skills.

*Exhibit C Annexed to Affidavit of Brother Robert
F. Lally—Memorandum Decision of Pino, J.
January 26, 1971*

Probably this intermediate program needs the greatest variety of specialized services of any segment of the educational program. There is obvious need for new and special testing and guidance services, for remedial work, for subject specialists and for human relations consultants. Textbooks and materials of instruction must be developed to meet this new program.

* * *

In order that this policy and others similar throughout the State might be implemented, the Board of Regents of the State of New York on May 27, 1965 amended § N.Y.C.R.R. 80.2 of the Regulations of the Commissioner of Education to read as follows:

“(h) Extension of Certificate Validity.

(1) Any school district which proposes an experiment concerned with organizational changes that alters the definition of the elementary, junior or senior high school may be granted approval for a five year period to employ a certified teacher (or appropriately licensed teacher in the cities of New York and Buffalo) for any teaching assignment, within the scope of the experiment, for which the teacher is deemed, by the Superintendent, or other legally authorized body, qualified by education and experience, provided:

(i) The proposed experiment is approved by the Board of Education upon the recommendation of the professional staff of the school district; and

*Exhibit C Annexed to Affidavit of Brother Robert
F. Lally—Memorandum Decision of Pino, J.
January 26, 1971*

(ii) The proposed experiment is approved by the Commissioner of Education; and

(iii) The proposed experiment includes appropriate procedures for evaluation.

(2) Permission to assign teachers in accordance with the terms of the experiment may be renewed for a five year period on evidence, satisfactory to the Commissioner, of instructional benefit to the children."

In accordance with these regulations the Board of Education on June 14, 1965, passed a resolution which reads in part:

"Whereas the Board of Examiners * * * has declared that the holders of licenses or appointees or eligibles for appointment as teachers, substitute teachers, guidance counselors and supervisors in junior high schools, are qualified to serve in their respective positions in the 6th grade of the junior high schools in the program submitted by the Acting Superintendent of Schools * * *

* * *

Resolved, that subject to the approval of the Commissioner of Education, the Acting Superintendent of Schools be, and he is hereby authorized, to make such assignments of personnel as are required to accomplish the purposes of the aforesaid program, including assignments of junior high school personnel declared appropriate by the Board

*Exhibit C Annexed to Affidavit of Brother Robert
F. Lally—Memorandum Decision of Pino, J.*

January 26, 1971

of Examiners as hereinabove set forth, and be it further

Resolved, that any inconsistent provisions of the by-laws of the Board of Education be and the same hereby are suspended during the conduct of the aforesaid program." (Emphasis supplied.)

Approval of "this experiment" was given by the Commissioner of Education on July 12, 1965 for a period of two years.

The Board of Education approved and initiated the program in 14 pilot intermediate schools in September 1966. At the present time, 40 intermediate schools have started on some portions of the new curriculum.

Initially the program was to last until July 1, 1967. It was extended by the Commissioner of Education to July 1, 1970 and request has been made to him to further extend the program for an additional 5 years.

It has been the practice of the Board of Education to make temporary assignments of intermediate school principals from the existing junior high school principals list. This list, however, was promulgated after a non-competitive examination announced in May 1964, and prior to the Board's adoption of its policy of reorganization of its schools.

On April 1, 1970, the position of principal of Intermediate School 33, which is located within the geographical confines of Community Board No. 14, became vacant. The Community Board has been attempting to fill the position

*Exhibit C Annexed to Affidavit of Brother Robert
F. Lally—Memorandum Decision of Pino, J.*

January 26, 1971

with one Claude Huntley, a licensed teacher in the New York City School System. He does not hold a New York City license for the position of junior high school principal nor does his name appear on the eligibility list for junior high school principal. However, he has been certified by the New York State Education Department as an elementary school principal effective February 1, 1969 pursuant to the regulations of the New York State Commissioner of Education 8 N.Y.C.R.R. 80.4. As of September 1, 1970, he became eligible in accordance with the foregoing regulations to be certified by the State Education Department, upon payment of the required fee, as school administrator and supervisor, to serve in any administrative-supervisory position up to and including that of Deputy Superintendent of Schools. Among the various administrative experiences that he has acquired is that of an acting assistant principal for 4 years at P.S. 36 N.Y.C. The Community Board now seeks to appoint Mr. Huntley as acting principal of the school, but the appointment has been stayed with the commencement of these proceedings. In the meanwhile, the Community Superintendent has been acting as the school's principal.

Petitioners contend that the existing eligible list for principal of a junior high school is intended to serve interchangeably and exclusively for appointment either to a junior high school or to an intermediate school and since a vacancy for the position of principal exists at Intermediate School 33, it is required to be filled within 6 months with one whose name appears on this eligible list or, in the alternative, by transfer of an appointed junior high school principal from another school. They also complain that the appointment of Mr. Huntley as

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acting principal for this vacancy violates a resolution of the Board of Education wherein it has provided the standards for the selection of acting principals to fill temporary vacancies, since he does not meet the requirements set therein.

In substance respondents contend that the junior high school eligible list does not entitle one whose name appears thereon to be considered, as a matter of right, for appointment to an intermediate school vacancy. They urge that since these schools are experimental—unique and innovative—and the criteria for principal for such schools has not as yet been developed, they have the capacity to temporarily appoint to the position one who in their judgment, has the qualities necessary to meet the new challenges that are presented. In addition, they assert that even if they would have to honor the junior high school list, a permanent appointment would not be required until September 1971 and they could, under these circumstances, appoint an acting principal.

The intermediate school has not been created from the mold of the junior high school. Its philosophy, curriculum and problems differ materially. Junior high schools were developed with the view that most students would not go on to a high school education. The educators endeavored to prepare students therein with the minimum of qualifications necessary for job holding. Academic standards and academic progress carried a lower priority. With the progression of years and the broadening of perspective more students advanced to high school education to the point where now it is the exception that one does not attain that level. Under these circumstances

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It was deemed necessary to prepare the student academically for high school and to adapt to a more relevant and dynamic curriculum, one which deals with the expanded horizons resulting from the vast changes in the social, political, economic and intellectual concepts and goals of this era. Thus in the intermediate schools the curriculum planned innovates the studies of the humanities—literature, art, philosophy and religion; the study of family living—home economics, sociology, art, music, industrial arts, health education, consumer education and economics; a series of courses in the performing arts; typewriting beginning in the fifth grade; foreign language in the fifth or sixth grade; and courses in fundamental skills, especially speaking and reading. In addition, the intermediate school is designed to help change the city school patterns of racial integration. With the incoming of the fifth and sixth grade students into the intermediate school, the students' lesser maturity, learning ability, attention span and ability to adjust to a departmentalized program, create problems vastly different from those which arise with the more mature students in the seventh grade upwards in junior high school. Staffing of personnel in significant positions to be able to cope with these problems and the new curriculum is a major undertaking.

In sum, the intermediate school is a unique field of view in an experimental stage and is not a junior high school. Nor is it a junior high school as defined by the regulations of the Commissioner of Education and the by-laws of the Board of Education, which have been suspended in relation to experimentation with the intermedi-

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ate schools. (See *Gladstone v. Board of Education of the City of New York*, 26 A D 2d 838).

The eligible list for principal of a junior high school arose, as previously stated, at a time when the intermediate school was not even planned by the Board of Education. The dates for the examination and the meeting of all the eligibility requirements for the junior high school principal license expired months prior to the putting in force of the new schools by the Board of Education's resolution. It is thus plain that the applicant for junior high school principal could not have been evaluated as to qualifications for a school as yet unborn in the minds of its planners. In addition, the plan itself reveals valid grounds for distinction between the two positions. It follows that the junior high school list was not intended to be the eligible list for intermediate school principal.

Under section 100, subdivision 4 of the by-laws of the Board of Education *regular* appointments for vacant positions must be filled from appropriate eligible lists. An eligible list for intermediate school principal, eventually contemplated by the Superintendents Committee on Intermediate Schools has not as yet been promulgated. The Board of Education's resolution of July 14, 1965 suspended the by-laws and authorized the making of "*such assignments of personnel as are required to accomplish the aforesaid program, including assignments of junior high school personnel * * **" (Emphasis supplied.) The resolution did not *require* the Board of Education to make appointments exclusively from junior high school personnel. It merely permitted their assignment to the inter-

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mediate schools. The resolution did not endow anyone with a claim of right to appointment. It left the Board of Education free to appoint as it deemed fit. The only limitations imposed upon it are contained in the regulations of the Commissioner of Education (8 N.Y.C.R.R. 100.2, *supra*) and section 2590-j of the Education Law. Under the Commissioner's regulations cited all teachers, whether regular or not, must be licensed. Nothing contained therein refers to supervisors. Under the stated section of the Education Law, *regular* appointments of supervisory personnel must be from persons on qualifying eligible lists. It however makes no restriction with respect to appointments on an acting or temporary basis. Thus in the absence of a qualifying list for the intermediate school, temporary or acting appointments of supervisory personnel may be made either from the junior high school list or by "such [other] assignments of personnel as are required to accomplish the purposes of the aforesaid program," without regard to any list.

Turning to the petitioners' assertion that a temporary appointment can be made only for six months and the provisions of the law upon which the claim is based, we read section 2573(2) of the Education Law. It provides " * * * Appointments shall be made from appropriate eligible lists to fill all existing vacancies not later than six months from the date of the existence of such vacancy, except that the board of education may defer such appointments until the opening of school following the expiration of such six month period." In the ordinary situation where a vacancy occurs, as, for example here, on April 1, 1970, the six-month period having expired on

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October 1, 1970, the Board of Education may then defer the appointment until the opening of the school year in September 1971. This section, however, is not applicable to the position of intermediate school principal, for, as heretofore noted, there is at present no "appropriate" eligible list, as such, to fill vacancies. As indicated above the junior high school list is not the "appropriate" list for intermediate schools. At most it is an optional list.

Among the exhibits submitted in support of the respondents' position is a summary of an independent research report sponsored jointly by the Board of Education of the City of New York and the New York State Education Department relating to the new curriculum activities of the intermediate schools, dated December 1969 (Ex. 7). It appears therefrom that adverse conditions in our school system have prevented the full implementation of this experiment that is necessary for a proper evaluation; and it recommends that further experimentation be continued for at least another three years. Pertinent to note is one of its many findings that "there was scarcely an area of administration and organization that did not present problems."

It is through experimentation that the novel and complex duties required of the personnel of the intermediate schools will evolve. Continued experimentation with the programs of the intermediate schools, including the formulation of criteria for appointment of its principals, seems indicated. In such event the further opportunity to develop them must be allowed. This court will not at this crucial point impose upon those who bear the respon-

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ibility of implementation the rigidity which petitioners
ask in the filling of these significant positions.

As was so aptly said by Judge Bergan in *Matter of
Council of Supervisory Associations v. Board of Educa-
tion*, 23 N Y 2d 458, 469:

"The experimentation which is the basis of this
proceeding may not solve the problem. But it is
not solved by rigid adherence to past techniques.
The Legislature and the responsible education of-
ficers of the state and city have seen experimenta-
tion as a possibility of improving the education of
children in slum areas. The court ought to give it
a reasonable chance of success."

The last of the petitioners' contentions, that the desig-
nation of Mr. Huntley as acting principal violates the es-
tablished policies of the Board of Education in filling
temporary vacancies, is without merit. The resolution of
the Board of Education establishing such policies pro-
vides that "any one" of the following may be designated:

"a. A licensed appointed assistant principal, de-
partment chairman or subject supervisor

b. A licensed assistant principal, department chair-
man or supervisor who is on an eligible list but who
has not as yet been appointed

c. A teacher who holds a state certificate for the
principalship of the school level indicated and who
has completed a full year's internship in super-
vision and/or administration in a recognized uni-

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versity, or who served satisfactorily as a supervisor for at least one year."

Mr. Huntley's qualifications, set forth previously, meet the requirements of subdivision c and accordingly his designation as acting principal is proper.

The petition is dismissed in all respects and the stay is vacated.

J.S.C.

Memorandum Decision of Pino, J. January 27, 1971

SUPREME COURT
KINGS COUNTY

(SPECIAL TERM PART I)
By PINO, J.

Dated January 27, 1971

In the Matter of the Application of COUNCIL OF SUPERVISORY ASSOCIATIONS OF THE PUBLIC SCHOOLS OF NEW YORK CITY, etc., et ano.,

Petitioners,

v.

BOARD OF EDUCATION OF THE
CITY OF NEW YORK, etc., et ano.,

Respondents.

Motion to dismiss the petition is granted (see companion motion herewith).

J.S.C.

AFFIDAVIT OF SERVICE ON ATTORNEY OF PRINTED PAPERS

State of New York, County of New York, ss.:

being duly sworn, says, that on the 25 day of June, 19 75
 at No. 1790 Bway in the Borough of Mn in The City of New York, he served one copies
 of the annexed Cypeller Supplement upon Nathanial R. Jones - Esq.,
James I. Peterson the attorney for the Cypellont in the within entitled action by delivering
 three copies of the same to a person in charge of said attorney's office during the absence of said attorney therefrom, and
 leaving the same with him.

Sworn to before me, this 25th
 day of June, 19 75
John Calia

JOHN CALIA
 Notary Public, State of New York
 No. 41-5573935 Queens County
 Certificate Filed in New York County
 Commission Expires March 30, 1976

Form 321-1M-1F2005E(57)

